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*Committed to Excellence*

September 10, 2001

Annette Lang  
United States Department of Justice  
Environmental Enforcement Section  
Environment and Natural Resources Division  
P.O. Box 7611  
Ben Franklin Station  
Washington D.C. 20044

David E. Northrop  
Porter, Wright, Morris & Arthur  
41 S. High St.  
Columbus, OH 43215

Jonathan Conte  
Blank, Rome, Comisky & McCauley, LLP  
PNC Center  
201 E. Fifth St., Suite 1700  
Cincinnati, OH 45202

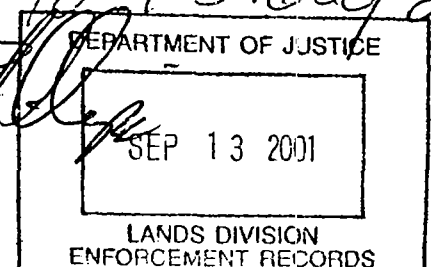
RE: United States of America v. Aeronca, Inc. et al., - Case No. C-1-01-439

Dear Ms. Lang, Mr. Northrop, and Mr. Conte:

Enclosed is Defendant John J. Whitton Trucking, Inc.'s Answer to the Amended Complaint and a Notice of Appearance for me on John J. Whitton Trucking, Inc.'s behalf. I will be in touch with you regarding how we proceed on this case from here. In the mean time, if you have any questions, please feel free to contact me.

Sincerely,

*John H. Phillips*  
John H. Phillips



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

- vs -

AERONICA, et al.

Defendants

CIVIL ACTION NO. C-1-01-439

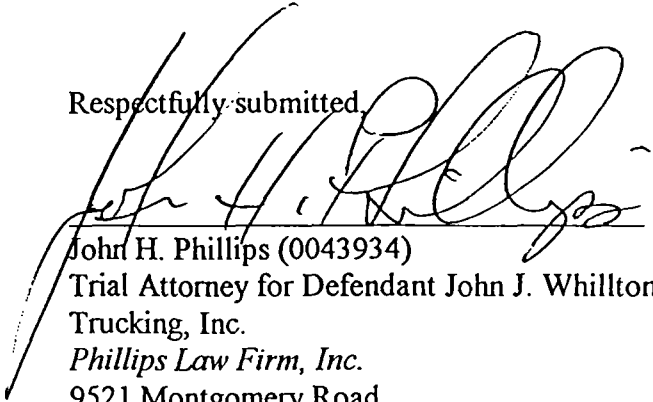
JUDGE BECKWITH

NOTICE OF APPEARANCE OF JOHN H.  
PHILLIPS AS TRIAL COUNSEL FOR  
JOHN J. WHITTON TRUCKING, INC.

Notice is hereby given that John H. Phillips is entering his appearance on behalf of the Defendant John J. Whitton Trucking, Inc. Please use the following address and contact information for future correspondence related to the within cause of action:

John H. Phillips  
*Phillips Law Firm, Inc.*  
9521 Montgomery Road  
Cincinnati, OH 45242  
☎ (513) 985-2500  
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Respectfully submitted,



John H. Phillips (0043934)  
Trial Attorney for Defendant John J. Whillton  
Trucking, Inc.  
*Phillips Law Firm, Inc.*  
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Cincinnati, OH 45242  
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## CERTIFICATE OF SERVICE

This is to certify that the foregoing Notice of Appearance of John H. Phillips as Trial Counsel for John J. Whitton Trucking, Inc. was served on the 10<sup>th</sup> day of September, 2001 by regular U.S. Mail, postage prepaid: upon the following:

Annette Lang  
United States Department of Justice  
Environmental Enforcement Section  
Environment and Natural Resources Division  
P.O. Box 7611  
Ben Franklin Station  
Washington D.C. 20044

David E. Northrop  
Porter, Wright, Morris & Arthur  
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Columbus, OH 43215

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PNC Center  
201 E. Fifth St., Suite 1700  
Cincinnati, OH 45202

A handwritten signature in black ink, appearing to read "John H. Phillips", is written over a horizontal line. The signature is stylized with large, sweeping loops.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

- vs -

AERONICA, et al.

Defendants

CIVIL ACTION NO. C-1-01-439

JUDGE BECKWITH

ANSWER OF JOHN J. WHITTON  
TRUCKING, INC. TO PLAINTIFF'S  
AMENDED COMPLAINT

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Now comes the Defendant, John J. Whitton Trucking, Inc., ("Defendant") and for its Answer to Plaintiff's Amended Complaint, states as follows:

1. As to the allegations in Paragraph 1 of the Amended Complaint. Defendant admits that the Plaintiff has alleged that it brought this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability of Act of 1980, as amended ("CERCLA"), for recovery of response costs allegedly incurred by United States in responding to releases or threatened releases of hazardous substances at or from the Skinner Landfill Superfund Site in West Chester, Ohio (the Site"). However, Defendant denies that the action is properly brought against this Defendant pursuant to CERCLA or any other law entitling Plaintiff to relief, of any kind or nature, including declaratory relief that any of the defendants are liable for any future response costs that the United States may incur as a result of the release or threatened release of hazardous substances at or from the Site. Further answering Paragraph 1 of the Amended Complaint, Defendant denies each and every allegation not specifically admitted herein to be true.

2. This Defendant admits paragraph 2 of the Amended Complaint.

3. This Defendant admits paragraph 3 of the Amended Complaint.
4. Paragraph 4 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
5. Paragraph 5 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
6. Paragraph 6 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
7. Paragraph 7 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
8. Paragraph 8 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
9. Paragraph 9 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.
10. In response to Paragraph 10 of the Amended Complaint, this Defendant denies that John J. Whitton Trucking, Inc. is a corporation organized under the laws of the State of Ohio. Defendant further denies that John J. Whitton Trucking, Inc. was a corporation organized under the laws of the State of Ohio at relevant times for purposes of the causes of action brought by Plaintiff in the Amended Complaint.
11. Defendant denies that John J. Whitton Trucking, Inc. is a “person” as defined by 42 U.S.C. § 9601(21). Further Answering Paragraph 11 of the Complaint, Defendant states that it cannot admit or deny the status of the other defendants in this action as a “person,” and therefore, denies the same.

12. Paragraph 12 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.

13. Paragraph 13 of the Amended Complaint does not apply to this Defendant, and therefore Defendant denies the same.

14. This Defendant denies the allegations in Paragraph 14 of the Amended Complaint.

15. This Defendant admits paragraph 15 of the Amended Complaint.

16. This Defendant denies the allegations in Paragraph 16 of the Amended Complaint.

17. This Defendant denies the allegations in Paragraph 17 of the Amended Complaint.

18. This Defendant denies the allegations in Paragraph 18 of the Amended Complaint.

19. In response to Paragraph 19 of the Amended Complaint, this Defendant restates and realleges the responses to Paragraphs 1 through 18, which are incorporated herein by reference as if fully set forth.

20. Paragraph 20 of the Amended Complaint is an incomplete statement of law. Accordingly, this Defendant denies the allegations in Paragraph 20 of the Amended Complaint.

21. Paragraph 21 of the Amended Complaint is an incomplete statement of law. Accordingly, this Defendant denies the allegations in Paragraph 21 of the Amended Complaint.

22. This Defendant denies the allegations in Paragraph 22 of the Amended Complaint.

23. This Defendant denies the allegations in Paragraph 23 of the Amended Complaint.

24. This Defendant denies the allegations in Paragraph 24 of the Amended Complaint.

25. This Defendant denies the allegations in Paragraph 25 of the Amended Complaint.

26. This Defendant denies the allegations in Paragraph 26 of the Amended Complaint.

27. This Defendant hereby denies each and every other allegation to the Amended Complaint not specifically admitted herein to be true.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a cause of action against this Defendant for which relief may be granted.

2. This Defendant, John J. Whitton Trucking, Inc. was not in business at the time the liabilities alleged herein were incurred.

3. To the extent that John J. Whitton incurred the liabilities herein alleged by Plaintiff in his individual capacity, this Defendant is entitled to a complete exoneration of all liability, as Defendant John J. Whitton Trucking, Inc. and John J. Whitton are separate and distinct legal entities.

4. To the extent that John J. Whitton incurred the liabilities herein alleged by Plaintiff in his individual capacity, John J. Whitton is deceased, his estate has been probated, and the time for making any and all claims with the probate estate is now time barred. Accordingly,

Plaintiff is barred by the applicable statutes of limitation as to any claims alleged to be flowing from John J. Whitton to this Defendant.

5. This Plaintiff has failed to join Defendants necessary to the proper adjudication of this matter pursuant to Rule 19 of the applicable Rules of Civil Procedure.

6. This cause of action as to this Defendant is time barred by the applicable statutes of limitation.

7. To the extent that this Defendant is liable, the damages alleged herein as to this Defendant are distinct and divisible as to this Defendant. Accordingly, this Defendant cannot be found jointly and severally liable in this cause of action as to the claims brought by Plaintiff against the other defendants.

8. Holding this Defendant jointly and severally liable would constitute an unconstitutional taking of property in violation of the Constitution of the United States of America.

9. Defendant John J. Whitton Trucking, Inc. is not a legal entity, and is therefore immune from suit.

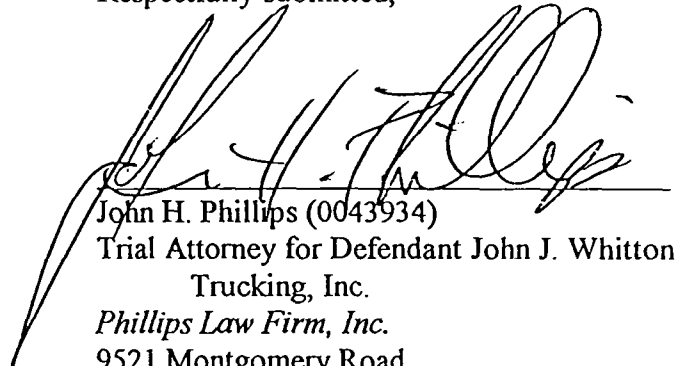
10. This Defendant hereby reserves the right to plead such other affirmative defenses as may be available to it as this Defendant becomes aware of such Defenses during the discovery phase of the within litigation.

WHEREFORE, having fully answered the Amended Complaint, this Defendant, John J. Whitton Trucking, Inc. hereby respectfully requests that this Court dismiss the within cause of action with prejudice, at Plaintiff's expense, and that the Plaintiff take nothing as to its claims



from this Defendant. This Defendant further requests that it be awarded its costs and legal fees in defending the within matter, and such other relief as the court deems appropriate and necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Phillips", is written over a horizontal line.

John H. Phillips (0043934)

Trial Attorney for Defendant John J. Whitton  
Trucking, Inc.

*Phillips Law Firm, Inc.*

9521 Montgomery Road

Cincinnati, OH 45242

☎ (513) 985-2500

☎ FAX 985-2503

### CERTIFICATE OF SERVICE

This is to certify that the foregoing Answer of Defendant John J. Whitton Trucking, Inc.  
to the Amended Complaint was served on the 10<sup>th</sup> day of September, 2001  
by regular U.S. Mail, postage prepaid: upon the following:

Annette Lang  
United States Department of Justice  
Environmental Enforcement Section  
Environment and Natural Resources Division  
P.O. Box 7611  
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A large, stylized handwritten signature in black ink, appearing to read "H. P. Phillips", is written over a horizontal line.